

DRACUT ZONING BOARD OF APPEALS

Meeting Minutes of July 17, 2014 at 7:00 p.m. @ Harmony Hall, 1660 Lakeview Avenue, Dracut.

Continued BOA 2005-13 @ 341 Broadway Road – Comprehensive Permit for 278 rental units with 4 buildings. Petitioner: First Dracut Development, LLC.

Mr. Lania was present. Chairman Crowley announced there would be no testimony taken at this hearing. He read a letter from Mr. Bartels dated July 17, 2014 requesting a continuance to the next scheduled meeting.

A motion to continue to the September 18, 2014 meeting was made by Mr. Hamilton and seconded by Mr. Mallory. The Board voted unanimously to continue.

2014-16 & 17 @ 17 Stewart Street – Special Permit 2.16.25 and Variance 2.12.50 for proposed 9'x14' sunroom with insufficient frontage and side yard setback.

Petitioner: Elizabeth and Keith McMeniman.

Chairman Crowley opened the meeting and signed in a set of prints drawn by James D. Aho, Professional Land Surveyor dated June 3, 2014.

Mr. and Mrs. McMeniman stated they want to build a potential sunroom on an existing deck that is only 7.6 feet from the side yard setback. They passed out a narrative, letters from abutters and pictures (copies attached).

Chairman Crowley noted he has a copy of a building permit to build the original 14'x14' deck in 2004 (copy attached) with the previous owner and a subsequent 9'x24' deck permit in 2012 (copy attached).

The McMeniman's purchased the house in 2005 noting it was built in 1955.

They applied for a building permit to build the sunroom on the existing deck and were informed by the Building Inspector they are in a B-1 Zone and the side setback is 20 feet. Mr. McLaughlin, Building Inspector, noted that he used the GIS plan (copy attached) for the original deck building permit in 2005 as decks are not subject to as much scrutiny as a permanent structure. The deck building permit in 2012 did have an As-Built Plan (copy attached) showing 25 feet to the house which would have met the 15 feet setback in an R-1 Zone, but not a B-1 zone as 20 feet is needed. After further review, it was noted that the plan submitted with this variance request has different figures than the plan presented with the 2012 building permit.

Chairman Crowley questioned why the sunroom could not be built on the back of the house as it would meet the rear setback requirement. Mrs. McMeniman answered that the cost would be too much.

Mr. Hamilton is uncomfortable with the plot of land versus the structure on it. If you go by the property lines noted on the new plan and the pictures presented, their land ends about halfway through their current driveway. In the pictures there is also a fence shown that goes from the house the width of the driveway and ends at the abutting yards fence which would be passed their property line. Mr. Ringer of Central Mass Sunroom noted that the old plot plan was used to install fence. There was further discussion about which

is the correct plot plan, but the plan presented with the variance request is the one being reviewed presently and believed to be the correct one.

Abutters: Who came forward in favor or in opposition?

Dave and Gloria Sciuto, 11 Stewart St.: Letter submitted in favor dated June 29, 2014.

Robert Roy, 24 Stewart St.: Letter submitted in favor dated June 29, 2014.

Marc Masotta, 25 Stewart St.: Letter submitted in favor dated June 29, 2014.

Michael Borges, 33 Stewart St.: Letter submitted in favor dated June 29, 2014.

A motion to close was made by Mr. Hamilton and seconded by Ms. Santiago-Hutchings. The Board voted unanimously to close.

A motion to approve the Special Permit for discussion was made by Mr. Stephen Hamilton and seconded by Ms. Heather Santiago-Hutchings. In reviewing the Special Permit, Chairman Crowley noted the fact that the deck has been there for a number of years and this addition would be on top of it, he thinks you could make an argument that it would not be more detrimental, although you could say it is an innocuous addition as it is now just a deck. The Board finds that the petitioner does not meet the following three requirements of the Special Permit: that the change does not (1) substantially impinge upon any public right of way that adjoins the lot on which the structure is to be constructed; (2) create a danger to public safety by reason of traffic access, flow and circulation; and (3) be out of character with the traditional settlement and construction patterns of the area in which it is to be reconstructed. The Board voted unanimously to deny.

A motion to approve the Variance for discussion was made by Mr. Stephen Hamilton and seconded by Mr. Michael Pagonis. Based on the criteria for a variance, Chairman Crowley does not feel the petitioner has demonstrated a hardship. He personally has a great deal of sympathy for what they are trying to do, however they do have options off the back of the property and could be investigated without a need for a variance. He would be inclined to vote against this request. Mr. Hamilton thinks an argument probably could be made that the shape and the way the house is set on the property has created a hardship, but he is just uncomfortable with this based on the information about where the property lines are and how the deck is actually going to impinge on the neighbor's property. Mr. Pagonis agrees that there is too much confusion as to where the lines actually are and he would also be uncomfortable voting for it. The Board finds the petitioner does not meet the requirements of a Variance as follows: that there is a hardship on the use of the land based on the soil conditions, shape or topography, this requested use does not derogate from the intent of the zoning by-law, and it is not injurious to the neighborhood. The Board voted unanimously to deny.

2014-18 @ 76 Clement Road – Variance 2.11.50 for insufficient side and rear yard setback for proposed 14'x24' pool shed/cabana. Petitioner: Mary Kay Kelley Gorman. Chairman Crowley opened the meeting and signed in a set of prints drawn by Richard A. Alleca, Professional Land Surveyor dated May 8, 2014.

Mr. and Mrs. Gorman stated they need to get a variance to erect a pool shed/cabana with insufficient side and rear yard setback. There is not enough land to set it back the required 15 feet.

Mr. Hamilton questioned the shed shown on the plot plan that is sitting on the property line. Mr. Gorman stated they are moving the shed to correct a wrong setback.

Mr. Mallory asked how long the concrete pad for the proposed pool shed/cabana had been in place. Mr. Gorman responded two (2) months.

Mr. Hamilton asked why the pool shed/cabana could not be moved closer to the back of the house or to the other side of the pool. Mr. Gorman answered it would not fit in any other location to meet the setback requirement and would be too dangerous to put on the other side of the pool as that is the deep end and has the diving board. The pad is part of the pool decking skirt. It was noted there is open space behind the property and no one can build on it. Mr. Mallory asked when the pool was installed. Spring 2014!

Abutters: Who came forward in favor or in opposition?

James E. Kirste and Renee M. Surprenant, 72 Clement Road: Letter submitted in favor dated May 23, 2014.

A motion to close was made by Mr. Mallory and seconded by Mr. Pagones. The Board voted unanimously to close.

A motion to approve the Variance was made by Mr. Scott Mallory and seconded by Mr. Michael Pagones. Mr. Pagones is in favor of this due to the fact there are two (2) front yards which pushes everything back and putting it in the front yard does not make any sense. Mr. Mallory's concern is if there had been a little more forethought about where they wanted to put things in order to gain the rear and side yard setback, they could have moved the pool down a little closer to the front yard then the pool shed could have been moved forward and this all would have been mitigated. Chairman Crowley appreciates what Mr. Mallory is saying, but he is looking at it as there is no increase in living space, viewing it more as a shed or storage area and it is not a permanent structure. Also there is the unique shape of the lot and it does back up to open space.

The Board finds the petitioner meets the requirements of a Variance as follows: that there is a hardship on the use of the land based on the soil conditions, shape or topography, this requested use does not derogate from the intent of the zoning by-law, and it is not injurious to the neighborhood. Those voting in favor to approve were Mr. Michael Pagones, Ms. Heather Santiago-Hutchings, Mr. John Crowley and Mr. Scott Mallory with Mr. Stephen Hamilton voting opposed. The motion passed on a four (4) to one (1) vote of the Board.

Acceptance of Minutes:

Ms. Santiago-Hutchings noted there was a spelling error on Page 3. This will be corrected by the Secretary.

A motion to accept the June 19, 2014 minutes as amended was made by Mr. Stephen Hamilton and seconded by Ms. Heather Santiago-Hutchings. The Board voted unanimously to accept the minutes as amended.

**Comprehensive Permit The Pines at Marsh Hill @ 2041 and 2083 Bridge Street
Time Extension Request:**

Mr. LeRiche was present. Chairman Crowley read a letter from Attorney Smolak dated June 19, 2014 requesting a three (3) year extension of the Comprehensive Permit Decision approved September 21, 2011. Chairman Crowley brought up for discussion the possibility that the Board could grant the extension with a mitigation of fees. When a filing for a 40B is applied for it freezes the permit fees from all the town's various agencies such as water and sewer. Mr. LeRiche stated he just got sewage a week and a half ago. When he went to the Sewer Department to see if he could put sewage in, they told him he went past the sixty (60) days that he had been notified he had to tie in so he

had to pay an extra \$50. He stated he was never notified. Chairman Crowley has had a discussion with Attorney Hall regarding the mitigation of fees when extensions are requested in general. Attorney Hall felt that if it were a reasonable increase and not prohibitive to the project, that there was some willingness to look at the fee structures and come to an agreement, then it would be perfectly legitimate to do this. After further discussion it was agreed that the Board would pursue further.

A motion to approve the extension request for three (3) years was Mr. Stephen Hamilton and seconded by Mr. Michael Pagones. Chairman Crowley noted that is Mr. LeRiche or anyone else that has a 40B were to come back and the Board resolves this issue that the Board will at least be looking at the possibility of asking for some mitigation on the fees so that the development will continue to pay its full share towards the support of the town's infrastructure. The Board voted unanimously to approve the three (3) year extension request.

Next Meeting:

There will be no August meeting.

Thursday, September 18, 2014

Adjournment:

A motion to adjourn was made by Mr. Stephen Hamilton and seconded by Mr. Scott Mallory. The Board voted unanimously to adjourn.

Board of Appeals Members

Chairman, John Crowley

Vice Chairman, Stephen Hamilton

Clerk, R. Scott Mallory

Member, Heather Santiago-Hutchings

Member, Michael Pagones